

REMARKS

This paper is responsive to the Office Action dated February 19, 2009 wherein claims 27-66 were rejected and claims 1-26 stand cancelled pursuant to a requirement for restriction/election. Claims 27-66 remain pending in this application. In view of the following remarks, Applicants request further examination and reconsideration of the present patent application.

35 USC 102

The Examiner rejected claims 27-29, 47 and 48 under 35 U.S.C 102(e) as being anticipated by 'Breed' (US Patent Publication Application Number 2003/0227382). The Applicants respectfully traverse these rejections.

Applicants respectfully submit that Breed is not a proper prior art reference due to Applicants' prior invention of the subject matter set forth in the presently rejected independent claims 27 and 47 and their dependent claims 28, 29 and 48. Upon removal of Breed as a prior art reference under 35 USC 102(e), the Applicants submit that the pending claims are in condition for allowance.

Removal of Breed Pursuant to 37 C.F.R §1.131

In view of Applicants' earlier date of invention of the subject matter disclosed and claimed in the present application, Applicants have chosen to remove the Breed reference pursuant to 37 C.F.R. § 1.131. Under Rule 131, the Applicants may overcome a prior art rejection by filing an appropriate declaration that establishes invention of the claimed subject matter by the Applicants prior to the effective date of the reference relied upon in the rejection. Prior invention may be shown by proving actual reduction to practice prior to the effective date of the reference.

Applicants respectfully submit that the declaration submitted with this response under 37 C.F.R § 1.131 establishes prior inventorship with regard to the Breed reference. Further, the declaration submitted with this response under 37 C.F.R. 1.131 removes Breed as proper prior art against the present application. Accordingly, Applicants submit that the enclosed Rule 131 Declaration, signed by Joseph Salvo, demonstrates that the invention disclosed and claimed in the present application was conceived and actually reduced to practice prior to the effective date of the Breed reference.

The effective date of Breed is June 11, 2002. In paragraph 4 of the attached Rule 131 Declaration, Joseph Salvo declares that the subject matter disclosed and recited in pending claims 27-29, 47 and 48 of the above-referenced application was conceived and actually reduced to practice by Applicants at least prior to June 11, 2002. This conception and reduction to practice is evidenced by the GE Patent Disclosure Letter titled, "Intelligent e-tags and their applications," a true and accurate redacted copy of which is filed concurrently herewith as Exhibit A. Further, the conception and reduction to practice is also evidenced by a GE presentation, a true and accurate redacted copy of which is filed concurrently herewith as Exhibit B. All of the features recited in the pending claims 27-29, 47 and 48 are disclosed in the referenced Patent Disclosure Letter and the GE presentation. In view of the foregoing, Applicants submit that subject matter disclosed and claimed in the pending claims 27-29, 47 and 48 was conceived and actually reduced to practice at least prior to the June 11, 2002 effective filing date of Breed.

Accordingly, in view of the Applicants' earlier conception and reduction to practice, the Applicants respectfully request that the Examiner remove Breed from consideration and withdraw all outstanding rejections based on Breed.

35 USC §103

The Examiner rejected claims 30-32, 36, 39, 49, 50, 55 and 58 under 35 U.S.C 103(a) as being unpatentable over 'Breed' (US Publication Application Number 2003/0227382).

As discussed above, Breed is not a proper prior art reference due to Applicants' prior invention of the subject matter set forth in the presently rejected independent claims 27 and 47. Claims 30-32, 36, 39, 49, 50, 55 and 58 depend directly or indirectly from claims 27 and 47, and are allowable by virtue of their dependency from an allowable base claim, as well as for the subject matter they separately recite. Thus, it is respectfully requested that the rejection of claims 30-32, 36, 39, 49, 50, 55 and 58 under 35 USC §103(a) be withdrawn.

The Examiner rejected claim 59 under 35 U.S.C 103(a) as being unpatentable over 'Breed' (US Publication Application Number 2003/0227382) in view of official notice as applied to claim 58 above, and further in view of Ulrich' et al. (US Patent Number 6,344,794).

As discussed above, Breed is not a proper prior art reference due to Applicants' prior invention of the subject matter set forth in the presently rejected independent claim 47. In addition, Ulrich et al. fails to obviate the deficiencies in the teachings of Breed. Claim 59

depends directly or indirectly from claim 47, and is allowable by virtue of its dependency from an allowable base claim, as well as for the subject matter it separately recites. Thus, it is respectfully requested that the rejection of claim 59 under 35 USC §103(a) be withdrawn.

The Examiner rejected claims 33-35 and 51-54 under 35 U.S.C 103(a) as being unpatentable over 'Breed' (US Publication Application Number 2003/0227382) in view of 'Ulrich' et al. (US Patent Number 6,344,794).

As discussed above, Breed is not a proper prior art reference due to Applicants' prior invention of the subject matter set forth in the presently rejected independent claims 27 and 47. In addition, Ulrich et al. fails to obviate the deficiencies in the teachings of Breed. Claims 33-35 and 51-54 depend directly or indirectly from claims 27 and 47, and are allowable by virtue of their dependency from an allowable base claim, as well as for the subject matter they separately recite. Thus, it is respectfully requested that the rejection of claims 33-35 and 51-54 under 35 USC §103(a) be withdrawn.

The Examiner rejected claims 37, 38, 56 and 57 under 35 U.S.C 103(a) as being unpatentable over 'Breed' (US Publication Application Number 2003/0227382).

As discussed above, Breed is not a proper prior art reference due to Applicants' prior invention of the subject matter set forth in the presently rejected independent claims 27 and 47. Claims 37, 38, 56 and 57 depend directly or indirectly from claims 27 and 47, and are allowable by virtue of their dependency from an allowable base claim, as well as for the subject matter they separately recite. Thus, it is respectfully requested that the rejection of claims 37, 38, 56 and 57 under 35 USC §103(a) be withdrawn.

The Examiner rejected claims 40, 41, 46, 60, 61 and 66 under 35 U.S.C 103(a) as being unpatentable over 'Breed' (US Publication Application Number 2003/0227382) in view of 'Katagishi' et al (US Publication Application Number 2003/0120745).

As discussed above, Breed is not a proper prior art reference due to Applicants' prior invention of the subject matter set forth in the presently rejected independent claims 27 and 47. In addition, Katagishi et al. fails to obviate the deficiencies in the teachings of Breed. Claims 40, 41, 46, 60, 61 and 66 depend directly or indirectly from claims 27 and 47, and are allowable by virtue of their dependency from an allowable base claim, as well as for the subject matter they separately recite. Thus, it is respectfully requested that the rejection of claims 40, 41, 46, 60, 61 and 66 under 35 USC §103(a) be withdrawn.

The Examiner rejected claims 42-44 and 62-64 under 35 U.S.C 103(a) as being unpatentable over 'Breed' (US Publication Application Number 2003/0227382) in view of 'Katagishi' et al (US Publication Application Number 2003/0120745) as applied to claims 40 and 60 above, and in view of official notice.

As discussed above, Breed is not a proper prior art reference due to Applicants' prior invention of the subject matter set forth in the presently rejected independent claims 27 and 47. In addition, Katagishi et al. fails to obviate the deficiencies in the teachings of Breed. Claims 42-44 and 62-64 depend directly or indirectly from claims 27 and 47, and are allowable by virtue of their dependency from an allowable base claim, as well as for the subject matter they separately recite. Thus, it is respectfully requested that the rejection of claims 42-44 and 62-64 under 35 USC §103(a) be withdrawn.

The Examiner rejected claims 45 and 65 under 35 U.S.C 103(a) as being unpatentable over 'Breed' (US Publication Application Number 2003/0227382) in view of 'Katagishi' et al (US Publication Application Number 2003/0120745) and further in view of 'Radican' (US Patent Number 6,148,291).

As discussed above, Breed is not a proper prior art reference due to Applicants' prior invention of the subject matter set forth in the presently rejected independent claims 27 and 47. In addition, Katagishi et al. and Radican fail to obviate the deficiencies in the teachings of Breed. Claims 45 and 65 depend directly or indirectly from claims 27 and 47, and are allowable by virtue of their dependency from an allowable base claim, as well as for the subject matter they separately recite. Thus, it is respectfully requested that the rejection of claims 45 and 65 under 35 USC §103(a) be withdrawn.

Accordingly, Applicants respectfully request that the Examiner withdraw the rejection under 35 USC 103.

Summary

For the reasons set out above, Applicant respectfully submits that the application is in condition for allowance. Favorable reconsideration and allowance of the application are, therefore, respectfully requested.

If the Examiner believes that anything further is necessary to place the application in better condition for allowance, the Examiner is kindly asked to contact Applicant's undersigned representative at the telephone number below.

Respectfully submitted,

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